

Minutes
TEXAS BOARD OF PROFESSIONAL ENGINEERS
REGULAR QUARTERLY BOARD MEETING
1917 IH35 SOUTH
AUSTIN, TX 78741
AUGUST 18, 2011 – 10:30 A.M.

Call to Order. G. Kemble Bennett, Ph.D., P.E., Chair, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:31 a.m. on August 18, 2011, at the Texas Board of Professional Engineers, 1917 IH-35 South, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

1. Roll Call and Welcome Visitors.

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|--------------------------------|------------|
| G. Kemble Bennett, Ph.D., P.E. | Chair |
| Daniel Wong, Ph.D., P.E. | Vice Chair |
| Gary Raba, D.Eng., P.E. | Secretary |
| Edward L. Summers, Ph.D. | Treasurer |
| Carry A. Baker | Member |
| Lamberto "Bobby" Balli, P.E. | Member |
| Jim Greer, P.E. | Member |
| Govind Nadkarni, P.E. | Member |
| Elvira Reyna | Member |

A quorum was present. Both Mr. Kevin Heyburn, Assistant Attorney General, and Ms. Veena Mohan, Assistant Attorney General, were present to provide legal counsel. Also present were Emeritus Board Members Mr. Edmundo Gonzalez, P.E., and Mr. Jose Guerra, P.E.

The following staff members were present:

| | |
|-------------------------|--------------------------------------|
| Lance Kinney, P.E. | Executive Director |
| Priscilla Pipho, MPA | Deputy Executive Director |
| C.W. Clark, P.E. | Director of Compliance & Enforcement |
| David L. Howell, P.E. | Director of Licensing |
| Jeff Mutscher | Director of Finance |
| Dewey Helmcamp, III, JD | Staff Attorney |
| Clif Bond | Supervising Investigator |
| Tyler Ferguson | Investigator |
| Dorothy Gonzales | Executive Assistant |

Visitors: Julia Harriod, P.E., President, Texas Society of Professional Engineers (TSPE); Trish Smith, Executive Director, TSPE; Peyton McKnight, American Council of Engineering Companies – Texas (ACEC-Texas); Sam Nelson, P.E., Texas Department of Insurance (TDI); Al Kosik, P.E., Texas Department of Transportation (TXDOT); Jennifer McEwan, Legislative and Governmental Director, TSPE; Marianne Baker, Attorney, TDI; Elizabeth Ret, Attorney, TDI; Stephen Augustine, Attorney, TDI.

2. Public Comment. None.

3. Consent Agenda.

- May 18, 2011, Licensing Committee Minutes
- May 19, 2011 Legislative Committee Minutes
- May 19, 2011, General Issues Committee Minutes
- May 19, 2011, Regular Quarterly Board Meeting Minutes
- Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases
- Licensing Applications.

It was MOVED/SECONDED (Summers/Nadkarni) to approve the consent agenda as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. ***(Consent Agenda)** Discuss and possibly approve minutes of the May 19, 2011, Regular Quarterly Board Meeting Minutes.

Discuss and Possibly Accept Committee Minutes:

5. ***(Consent Agenda)** May 18, 2011, Licensing Committee Minutes.
6. ***(Consent Agenda)** May 19, 2011, Legislative Committee Minutes.
7. ***(Consent Agenda)** May 19, 2011, General Issues Committee Minutes.

Agenda items 4-7 were approved under Consent Agenda, agenda item #3.

Discuss and Possibly Act on Reports:

8. Board Members' Activity Reports.

9. Emeritus Members' Activity Reports.

Dr. Bennett indicated that agenda items number 8-9 were for information only. Dr. Bennett informed the Board that Mr. Nichols has asked to not renew his emeritus status. He thanked Mr. Nichols for all his years of service to the Board, as a Board member, Chairman, and as an Emeritus Member of the Board. He commended Mr. Nichols for his service at NCEES meetings and committees and for what he has done for the engineering profession.

Mr. Gonzalez reported that two Texas A&M engineering students volunteered to shadow engineering activities for three weeks at his firm. He added that it was a pleasure to work with them. Dr. Bennett said the shadowing programs are very important and have been at Texas A&M for a while; he added that the shadowing is a great opportunity for students to learn what engineering is about. He said that it makes a world of difference to their studies and engineering.

10. Budget.

▪ **FY11 3rd Quarter Budget Report.** Mr. Mutscher reviewed with the Board members the budget report as of May 31, 2011, which was included as a board exhibit. He reported that a positive variance continues both in revenue and expenses, and has carried on throughout the last two months as well. No action required.

▪ **FY12 Proposed Budget Adoption.** Mr. Mutscher presented the FY12 budget to the Board members, and he added that the budget was developed by tracking income and expenses on a monthly basis. Actual revenue and expenses through July 31st were analyzed on a line item basis in each of the four cost centers. The results were then projected to year end. The projected amounts were studied and upcoming projects were considered, feedback was obtained from the Executive and other Directors. The projected amounts were also compared to historic data. The line item amounts for each cost center were then rolled up into total expenses and revenue categories, and those categories are summarized in annual financial report classification. The obvious large dollar amount difference between FY11 and FY12 is the result of the exam fee collection process moving to NCEES at the May 2011 board meeting. For FY12 both exam revenues and expenses are removed. Mr. Mutscher explained the differences in the revenue and expenses between FY11 and FY12. Mr. Mutscher asked the Board members for their approval of the budget so that it can be put into effect September 1, 2011.

It was MOVED/SECONDED (Summer/Balli) to approve the FY12 Budget as submitted. A vote was taken, and the MOTION PASSED.

The Chair took agenda item #12 out of order, see below.

11. Personnel Matters—this agenda item will be considered under executive session as authorized under Government Code §551.074.

- Executive Director—Annual Review

The Chair read the following: The Board will now meet in executive session regarding the annual review of the Executive Director as authorized under Government Code §551.074. The time is 12:05 pm. The only persons in executive session are Board members, and Mr. Kevin Heyburn, General Counsel.

The Chair reconvened the Board meeting in open session at 1:10 pm. No action was taken in executive session.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

12. Enforcement Committee.

- Director of Compliance & Enforcement Report. Mr. Clark gave the following report.
 - Discuss and possibly act on the following rule proposals.
 - **§137.51 General Practice.** This proposed rule change will clarify the response time from "promptly" to "21 days". The license holder shall respond to the Board in writing on all written requests within 21 days of receipt. It was MOVED/SECONDED (Raba/Reyna) to approve to post §137.51, General Practice, in the Texas Register. A vote was taken and the MOTION PASSED.
 - **§139.35 Sanctions and Penalties.** This proposed rule change modifies the sanction tables in the rule in two ways: A header has been added to the sanction tables that indicates that the sanctions being issued could be less than or greater than the sanction listed in the table and that the listed suspension could be partially or fully probated. Two other areas have been modified, deleting the word "probated" and replacing it with the "number" year suspension and dollar amount, and that any suspension period would be at the discretion of the Board. The addition of two new table entries were added to comply with HB3, regarding windstorm inspectors.

Mr. Clark reviewed the new sanctions in table B, in particular the new sanctions that address the failure to comply with the new TDI windstorm inspection accordance with HB3.

It was MOVED/SECONDED (Raba/Nadkarni) to approve to post §139.35, Sanctions and Penalties in the Texas Register. A vote was taken and the MOTION PASSED.

- **C&E Internal Audit Report.** Mr. Kinney mentioned that the Board schedules an annual internal audit. This year the audit was in the Compliance & Enforcement Division. The audit report was favorable with no findings, and Mr. Kinney thanked the Compliance & Enforcement Division for their hard work.
- **Review, discuss, and possibly act on modifications to approved Board orders.** Dr. Raba reported to the Board that the Committee discussed at length the proposed policy for modifications of Consent Orders by the Executive Director. The Board would allow the Executive Director to modify the signed consent order regarding a possible payment plan and/or the length of payment for the PE. Mr. Kinney shared a recent situation regarding a request to modify an approved board order. He added that a policy statement would be written to address this change. After a discussion of payment plan options, it was clarified that the maximum time allowed will be one (1) year. Dr. Raba agreed and stated that the modification should not be stretched out. Dr. Bennett recalled the case Mr. Kinney had shared, and that the person did have a legitimate reason, but due to the rule he could not make the accommodation. Mr. Helmcamp added that the policy should include that any failure to make a payment as scheduled constitutes a violation of the order and will have consequences. Dr. Bennett commented that any agreement to the change should be in writing. Mr. Kinney said the language would be the same language used in the consent orders, and that the licensee must have a reason for the maximum one year payment plan. .

It was MOVED/SECONDED (Raba/Nadkarni) allow staff to proceed but to change the time frame from one (1) year to six (6) months.

Dr. Bennett directed staff to bring the modification policy to the Enforcement Committee. Mr. Nadkarni suggested an amendment to the original motion - if the Enforcement Committee Chair reviewed and approved the revised policy, it would be considered approved by the Board. Dr. Bennett agreed with the suggestion.

Following the discussion the following amended motion was made.

It was MOVED/SECONDED (Raba/Nadkarni) to allow the Executive Director to develop a policy that will allow him some leniency of extending the time lines of payments from sanctioned licensees up to a six month period based on his discretion and his fine tuned listening to the intent of the Board, and desires and wishes, subject to approval from the Enforcement Committee Chair. A vote was taken, and the MOTION PASSED 8 to 1, Mr. Balli voted against the motion.

13. **General Issues Committee.**

- **Discuss and possibly act the following rule adoption.**
- **§137.5—Notification of Address Change, Employer Change, and Criminal Convictions.** The published rule requires licensees to notify the Board if they make a name change. There was one comment received, which stated that the proposed rule was discriminatory because of the nature of documentation required. The Board responded to the comment in the adoption preamble by disagreeing and by clarifying Board policy to allow a valid Texas driver's license as an acceptable documentation method for name change.
- **§137.9—Renewal for Expired License.** The published rule was proposed to be consistent with state law which prohibits the renewal of a license for an individual who is delinquent on Student Loans. There were no comments received.

Dr. Wong informed the Board that the Committee unanimously recommended adoption of both rule amendments. It was MOVED/SECONDED (Wong/Baker) to adopt §137.5, Notification of Address Change, Employer Change, and Criminal Convictions, and §137.9, Renewal for Expired License. A vote was taken and the MOTION PASSED.

- **Discuss and possibly act on the following rule proposals:**
- **§131.15—Committees.** This proposed rule change removes the Joint Advisory Committee (JAC) from the rules in compliance with HB 2284 passed during the 82nd Legislative Session, which removed the JAC from the statute.

It was MOVED/SECONDED (Wong/Greer) to approve the proposed rule change to §131.15, Committees, to be posted in the Texas Register for comment. A vote was taken, and the MOTION PASSED.

- **§137.19- Engineers Qualified to be Texas Windstorm Inspectors.** This proposed rule is a new rule which implements a portion of HB 3 passed during the 82nd Legislative special session. This rule creates the process by which qualified engineers can demonstrate competence necessary to be windstorm inspectors. Staff has been working closely with staff from the TDI on this process. Mr. Sam Nelson from TDI addressed the Board and thanked staff for all their hard work and efforts on this new legislative change.

It was MOVED/SECONDED (Wong/Nadkarni) to approve the new rule to be posted in the Texas Register for comment, and involve the General Issues Chair and one additional General Issues Committee member appointed by the General Issues Committee Chair to be involved as a liaison.

Dr. Bennett commented that the statute states that this new rule must be developed and passed by December 2011.

A vote was taken and the MOTION PASSED.

14. **Licensing Committee.**

• **Personal Appearances from Licensing Applicants.**

Mr. Greer reported that there were nine personal appearances before the Licensing Committee.

- Mr. Yasin Ali was seeking licensure in Texas. He is currently licensed in Canada. The Committee recommended that he be allowed to take the PE exam.
- Mr. Kirk Hall was seeking take the PE in Texas. The Committee recommended that he be allowed to take the PE exam.
- Ms. Jennifer Henderson was seeking to take the PE exam. The Committee felt that she needed to gain an additional year of experience in the same field in which she is currently practicing. Her application will be put on hold. The Committee recommended to allow the licensing director to review the additional documentation submitted and unless there are any questions or concerns, she should be allowed to take the PE when she has the additional experience.
- Mr. Harrison Hudson was seeking to take the PE exam. The Committee recommended he be allowed to take the PE exam.
- Mr. Daniel Hurta was seeking to take the PE exam. The Committee recommended he be allowed to take the PE exam in April 2012.
- Mr. Michael Krieber was seeking to be licensed in Texas. The Committee recommended he be approved to be licensed in Texas.
- Mr. Logan Smith was seeking to be licensed in Texas. The Committee recommended he be allowed to take the PE exam.
- Mr. Frances Stinton was seeking to be licensed in Texas. The Committee recommended he be approved to be licensed in Texas.
- Mr. Denny Wong was seeking to take the PE exam. The Committee recommends that staff hold his application for one year. Mr. Wong was asked to re-appear before the Licensing Committee in one year, and provide additional references to the Committee.

It was MOVED/SECONDED (Greer/Nadkarni) to accept the Licensing Committees recommendations as presented. A vote was taken and the MOTION PASSED.

• **Licensing Director's Report.**

- Discuss and Possibly Act on the following rule adoptions
 - **§133.27—Application for Temporary License for Engineers Currently Licensed Outside the United States.** Clarifies that three reference statements must accompany the application.
 - **§133.61—Engineering Examinations Required for a License to Practice as a Professional Engineer.** Allows a contract exam and administration company to collect exam registration fees and handle refunds and transfers.
 - **§133.67---Examination on the Principles and Practice of Engineering.** Clarifies that the applicants taking the Structural Engineering exam must receive acceptable results on both exam components within four exam administrations to pass the exam.
 - **§133.73---Examination Analysis.** Clarifies how examinees are notified, corrects the grading verification options that are available, and adds the requirement that acceptable results must be received on both components of the Structural Engineering exam to be considered passed.

Mr. Greer reported that all the rules referenced above were published in the Texas register and one comment was received and addressed. The comment referenced §133.61, Mr. Howell responded and the commenter was satisfied with the response, as addressed in the preamble. No changes were made to the rule as published.

It was MOVED/SECONDED (Greer/Balli) recommends to adopt §§133.27, 133.61, 133.67, 133.73 as presented. A vote was taken and the MOTION PASSED.

Mr. Howell reported on the Licensing division activities and application process. He reported that an online application is now available and has been very successful for customers. Mr. Howell thanked staff for their hard work.

Mr. Howell reported that he has been working with a committee created by the Software Engineering Licensure Consortium (SELC) to create a guide for other licensing Boards on how to license software engineers. The draft was presented to the SELC and will be presented to the MBAs by Mr. Kinney at the August NCEES meeting.

Mr. Howell reviewed the application report included as an exhibit.

Discuss and Possibly Act on Reports or Items reported by the Executive Director:

15. Executive Director's Report.

- **Introduction of new TBPE employees**—Mr. Kinney introduced Mr. Dewey Helmcamp, III, JD, staff attorney, and Mr. Deverett Morrow, IT department, as new employees to the Board.
- **Activity Report**—The activity report was included as an exhibit, Mr. Kinney commented that if anyone had any questions, he would be glad to answer during or after the meeting.
- **Emeritus Members Annual Report and Continuation of Service**—Mr. Kinney mentioned that it was time for the Board to review the emeritus members' contracts. Dr. Bennett and Board members thanked the emeritus members for all their service to the Board, and for being a representative of the Board at the NCEES functions. He commented that Mr. Nichols has requested to step down as emeritus member. Dr. Bennett mentioned that the Board will send him a recognition plaque and letter thanking him for his service to the Board.

It was MOVED/SECONDED (Nadkarni/Baker) to approve to renew the emeritus members' contract for Mr. Jose I. Guerra, P.E., and Mr. Edmundo Gonzales, Jr., P.E. for FY12. A vote was taken, and the MOTION PASSED.

NCEES Motions—Mr. Kinney mentioned that last year there was a workshop for Board members attending the NCEES conference. This year Mr. Nadkarni will be representing Texas along with staff members. The exhibits include the motion, the affect on the Board, if any, and the recommendation from staff. Mr. Kinney reviewed the motions and staff recommendations.

- **Texas Quality Award**—Mr. Kinney commented that the agency has begun a quality improvement program based on the Malcom Baldrige Quality Criteria, and the agency has been recognized by Quality Texas at the engagement level. The agency issued a press release which was included in board materials.
- **SOAH Cases, Suits Against the Board Report, & Status of Court Cases (Injunctions)**—This will be added to the Enforcement Committee. Mr. Helmcamp has developed a plan and a schedule to handle these cases.
- **Legislative Update**—Summary of the legislative session including HB2284 and the special session which passed HB3.
- **Engineers & Architects update**— Mr. Kinney presented an analysis of HB2284. The staff has been working very closely with the Texas Board of Architectural Examiners (TBAE) on press releases, conferences, etc. The next step is the deadline for engineers to apply to TBAE. The agencies hope to have co-presentations to give the same information. Everything seems to be moving smoothly. Dr. Bennett thanked TSPE for all their efforts and work with the Architect Society, TBAE, and the TBPE on this matter.
- **Outreach Activities**—Mr. Kinney reported that staff continues to give several outreach presentations every week. The presentation that is used will be revised and modified with new information for next year.
- **Online Applications** - Mr. Kinney thanked the Licensing staff for their efforts and hard work. The online application system has been very well received by applicants.
- Mr. Kinney mentioned that he will be the Chair to the NCEES Computer Based Testing Task Force; Mr. Howell will be on the NCEES Outreach Task Force.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

16. *(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties and Dismissed Cases.

Agenda item #16 was approved in the Consent Agenda, see agenda item #3 above.

17. Agreed Board Orders.

1. Building Inspection Services, Inc. (Nadkarni).

It was MOVED/SECONDED (Summers/Raba) to accept the Board Order as submitted. A vote was taken and the MOTION PASSED. Mr. Nadkarni abstained from voting.

18. **Consent Orders.**

Disciplinary Matters – Non-Practice Violations

2. Christopher Glenn Goodman, P.E.

Disciplinary Matters – Practice Violations

3. Nigel Matthew Henry Ottwa Brown, P.E.

4. Mark Donohue, P.E.

5. Warren Van Simmons, P.E.

6. Enrique Isidoro Tabak

Sanctions Against Non-License Holders

7. Joe Acevedo

Firm Registrations/Sole Proprietorship Sanctions

8. CSD Engineering Group, Inc.

9. Cadick Corporation

10. Foundation Inspections, L.P.

It was MOVED/SECONDED (Summers/Greer) to accept the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

Cease and Desist Order, Agreements, Injunctions/Default Judgments, Criminal convictions, and Other Items Agreements

11. **Anthony G. Garza, Aka Gary Garza.**

Mr. Clark reported that Mr. Garza was issued a cease and desist because he had previously signed an agreed final judgment and permanent injunction for identifying himself again as a graduate engineer. No action required from the Board.

The Chair returned to agenda item #11.

Discuss and Possibly Act on Licensing Applications Requiring Board Ruling:

19. ***(Consent Agenda) Licensing Applications. (QUESTION: What does this communicate?)**

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

Approved for Licensure

Not Approved for Licensure

Waivers – Both

Waivers – FE

Waivers— PE

Approved for Exams

Exams Not Approved

Firms Approved

Agenda item #19 was accepted under Consent Agenda, see agenda item #3 above.

Discuss and Possibly Act on Other Matters

20. **Issues from Board members for future meetings.**

None.

21. **Future TBPE meeting dates.**

Next Board meetings are scheduled in November 16-17, 2011.

Adjourn.

It was MOVED/SECONDED (Nadkarni/Wong) to adjourn the meeting at 1:45 pm. A vote was taken, and the MOTION PASSED.

Date Board approved minutes as submitted:

November 17, 2011